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Attorneys for Plaintiff  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

M/V COSCO BUSAN, LR/IMO Ship No.  
9231743, her engines, apparel, electronics, tackle,  
boats, appurtenances, etc., *in rem*, THE  
SHIPOWNERS' INSURANCE & GUARANTY  
COMPANY LTD., REGAL STONE LIMITED,  
FLEET MANAGEMENT LTD., and JOHN  
COTA, *in personam*,

Defendants.

Civil No. 07-6045  
IN ADMIRALTY

REQUEST FOR AUTHORIZATION FOR  
EXECUTION OF *IN REM* PROCESS OF  
ARREST TO BE HELD TEMPORARILY  
IN ABEYANCE LAR 3-4

REQUEST FOR AUTHORIZATION FOR TEMPORARY ABEYANCE OF EXECUTION OF ARREST

1 Plaintiff, United States, has filed its verified complaint in admiralty in this action and, further,  
2 has requested issuance of a Warrant for Arrest of the defendant vessel M/V COSCO BUSAN, *in rem*  
3 (the "Vessel"), in accordance with Supplemental Admiralty Rule C(3) of the Federal Rules of Civil  
4 Procedure and Local Admiralty Rule 3-1.

5 The United States hereby requests, pursuant to Local Admiralty Rule 3-4, that execution of  
6 the Court's Warrant for Arrest be held temporarily in abeyance, *i.e.*, that the Marshal need not be  
7 required to execute the Warrant immediately. The request is made for the following reasons.

8 In order to avoid arrest of the Vessel, the United States has made a request to representatives  
9 of the Vessel interests that a "Letter of Undertaking" ("LOU") or other form of substitute security  
10 be provided in accordance with Supplemental Admiralty Rule E(5) of the Federal Rules of Civil  
11 Procedure.<sup>1</sup> Issuance of an appropriate LOU would obviate the necessity of arrest and the need for  
12 *custodia legis* of the Vessel by and through the Court. In essence, the United States' *in rem* claims  
13 would proceed against the LOU as substitute security in place of the Vessel.

14 The United States has not received any response to its request – made on Tuesday, November  
15 20<sup>th</sup>, and thus more than a week ago. The undersigned further informed the Vessel interests'  
16 representative that the United States had prepared its Complaint and other papers relevant to seeking  
17 arrest of the Vessel. (The undersigned counsel provided his cell phone number and indicated that  
18 he would accept a call at *any* time, including after close of regular business.)

19 In order to pursue all reasonable efforts, however, the United States is still willing to provide  
20 *reasonable* accommodation to the Vessel and its owners/representatives through the Government's  
21 willingness to consider adequate substitute security in lieu of arrest. If those efforts at cooperation  
22 are not returned in kind, arrest under appropriate procedures then may become necessary in order to  
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25 <sup>1</sup> We understand that the Vessel and her defendant owner are entered (insured) with a British  
26 and/or Bermuda based Protection and Indemnity Association (P&I Clubs are roughly the maritime equivalent  
27 of an insurer), *i.e.*, the Steamship Mutual Underwriting Association (Bermuda) Limited, and/or The  
Steamship Mutual Underwriting Association Limited ("Steamship London"). In admiralty, Letters of  
Undertaking typically are issued by the vessel owner's P&I Club.

1 secure and preserve the United States' *in rem* claims. Should that become necessary, and particularly  
 2 if the Vessel's owners and/or operators were to attempt to have the vessel depart the jurisdiction  
 3 without first having provided substitute security, the United States would proceed with execution  
 4 of the Warrant through the auspices of the Marshal. The proposed Order for Temporary Abeyance  
 5 of Execution of Process would allow that to occur without further order of the Court.

6 We stress that the United States does *not* represent or claim that the vessel's owners or  
 7 operators would allow the Vessel to attempt to abscond from the Court's jurisdiction. Indeed, we  
 8 would be extremely surprised if such an event transpired since, among other reasons, cooperation  
 9 amongst the members of the admiralty bar who represent maritime clients (and the respected P&I  
 10 Clubs that stand behind their member/assureds) is by far the rule, rather than the exception.

11 As a practical matter, the Vessel presently is in repair status, such that the United States *does*  
 12 *not and will not*, for a variety of reasons, seek to impede those repairs. However, if the repairs are  
 13 completed sooner than expected and/or completed to the extent the Vessel can depart the jurisdiction  
 14 for a foreign voyage and port, and further assuming that all other legal and practical impediments  
 15 to sailing from San Francisco Bay would be alleviated, the Government's *in rem* rights and remedies  
 16 must be protected, either through substitute security – far preferred – or *in rem* arrest.

17 Dated: November 30, 2007.

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 19 Acting Assistant Attorney General

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28 Attorneys for Plaintiff United States of America